

On May 19, 2009 appellant, then a 44-year-old lead transportation security officer (screener), filed a claim for compensation alleging that he injured his low back in the performance of duty on May 15, 2009: “Walking in the checkpoint when his back went out and his legs buckled. He couldn’t walk. He was leaning against a wall in extreme pain in his lower

back and an uncontrollable sweat.”<sup>1</sup> A witness described what happened: “[Appellant] took a step forward and legs gave out. He grabbed a hold of the X-ray machine to keep from falling. I asked if he was OK and he seemed to be in too much pain to answer. He let go and tried to take off walking and started to fall again and caught the wall.” Appellant stopped work on May 15, 2009 and sought medical attention.

An emergency medical services report on May 15, 2009 noted the following: “Arrived at airport 0330 AM in pain, progressively got worse, until patient could barely walk.” It was noted that appellant reported pain radiating into his right leg. “Began last Thursday and has increased until today.”<sup>2</sup> The report noted a right herniated nucleus pulposus in 2002.

A treatment note from March 1, 2004 gave a diagnosis of low back pain and right lumbar radiculopathy: “Pain occurred 2/28/04 while getting up from a chair after break. Had been lifting luggage onto a table as usual but no pain while lifting. History of previous bouts of low back pain but this is worse.” Appellant reported a flare-up on September 1, 2004 with pain to his right knee. He was diagnosed with spinal stenosis. On February 8, 2008 appellant presented with a history of waking up with severe low back pain the day before with radiation into the right leg. An August 17, 2008 magnetic resonance imaging (MRI) scan showed neural foraminal stenosis bilaterally at L5-S1. On April 21, 2008 appellant reported more back pain with increased outside work. He was diagnosed on May 1, 2008 with low back pain and acute exacerbation.

On May 8, 2009 appellant presented with the following history: “Patient states he had cleaned the windows of his car yesterday causing him to contort in different ways. About 5 P.M. he started to have pain. He did not sleep much last night. The pain goes to both knees (posterior right and anterior/posterior left).” Appellant was diagnosed with acute lumbar strain.

A magnetic resonance imaging (MRI) scan obtained on May 15, 2009 showed a moderate-sized left paracentral disc protrusion at L5-S1 thought to be compressing the left S1 nerve root. “This also extends somewhat laterally into the left-sided neural foramina and could potentially [affect] the left L5 nerve root. This clinical significance of these findings [is] questionable given clinical history reports right-sided leg pain.” The MRI scan also showed a mild disc bulge at L4-5 with mild facet arthropathy at L4-5 and L5-S1.

On May 18, 2009 appellant was diagnosed with lumbar disc disease and right lumbar radiculitis. On June 23, 2009 he was diagnosed with postlaminectomy syndrome, lumbar region; lumbar radiculopathy and herniated lumbar disc.

On June 25, 2009 Dr. Wade M. Ceola, a Board-certified neurosurgeon, reported the following history of injury: “His work injury, as noted, was while working on May 15[, 2009]

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<sup>1</sup> It appears that a supervisor filed the claim for him.

<sup>2</sup> May 15, 2009 was a Friday. “Last Thursday” would have been May 7, 2009. The emergency medical services report noted the date of onset as May 7, 2009.

and he bent over to put tubs in a pile, felt a popping sensation and had pain beginning shortly after that.” He offered the following medical explanation for appellant’s ruptured disc:

“[Appellant] was bending and lifting a large stack of tubs, particularly bending over and reaching. This is what puts the most stress on a disc and certainly may have contributed to a disc rupture. I have nothing by patient’s history as to whether he has had previous back injury or back symptoms previously. Based on his history of no previous injuries to his back I see no other reason for this disc rupture. Again, the history comes from the patient. I have no other supporting documentation as to whether he has seen other people in the past.

“At this stage he does have disc ruptured causing his limitations at work and lifting boxes at work may certainly have triggered the disc rupture. However, I have no previous films. I can[no]t age the disc rupture, but the patient notes this is the first time he has sought treatment for it.”

On July 12, 2009 appellant informed the Office that on May 15, 2009 he was monitoring operations on the checkpoint and picked up a stack of about 16 empty divesture bins and bent over to put them on the cart to return them to the front of the lane. “As I bent over I felt an extreme amount of pain in my back so I dropped the bins on the cart and slowly stood up. After I felt I could move I started to walk up towards the x-ray and realized that I most likely would not make it. I turned around and tried to make it to the chairs on the checkpoint and when I took a step with my right leg it buckled and felt like there was no leg to stand on.” Appellant explained that a supervisor filled out his accident report, “and that is why the statements are different.”

On July 27, 2009 the Office denied appellant’s claim for compensation. It found that the medical evidence did not establish that the diagnosed medical condition resulted from the established work-related events. The Office found that Dr. Ceola based his opinion on an incomplete and inaccurate factual and medical background, as the record documented a history of low back and leg pain dating to 2004, and as the emergency medical services report listed a disc condition in 2002.

During a November 13, 2009 telephonic hearing before an Office hearing representative, appellant testified that he injured his back in March 2004 while getting up from a chair. He did not file a claim for the injury, which “flares up usually about once a year.” Appellant also injured his back in August 2006 while pulling a pilot’s bag out of the x-ray machine. He stated that in early May 2009 he was packing up equipment from the old airport: file cabinets, boxes of supplies, taking down signs, moving furniture such as bookshelves and podiums. It was after his days off – May 6 and 7 – that his back started to bother him. Appellant did not know why it started hurting: “That’s the way my back has always been, you know. Honestly, I don’t know.”

On May 15, 2009 appellant noticed that it was hard walking up the stairs from the parking lot that morning. He described how, later on, he picked up some tubs -- the kind passengers put their belongings in to send them through the x-ray machine -- and when he bent over to put them on the return cart to take them to the front of the line, he felt an awful hot pain

in his back. “So I dropped the tubs and then slowly stood up, leaning on the cart, and I thought, wow, that hurt.”

Appellant testified that he never had a laminectomy or other low back operation. He explained that he did not have a disc condition diagnosed in 2002. Appellant believed that the doctor who recorded that misunderstood what he intended. Dr. Ceola had asked him if he had any previous back problems or surgeries, and appellant held up his left hand -- which had an amputated index finger and thumb -- and answered in the affirmative, in 2002, but he meant only to convey that he had his fingers amputated in 2002.

On December 29, 2009 the Office hearing representative affirmed the denial of appellant’s claim. She found that no medical report adequately addressed appellant’s full history of medical care for back symptomatology or his treatment immediately preceding the claimed work injury on May 15, 2009. The Office hearing representative noted, as well, that none of the most contemporaneous reports mentioned lifting tubs at work. Dr. Ceola, the only physician who supported some level of work-relatedness, hedged his opinion with the caveat that he might not have the full history or record.

### **LEGAL PRECEDENT**

The Federal Employees’ Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty.<sup>3</sup> An employee seeking benefits under the Act has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.<sup>4</sup>

The mere fact that a condition manifests itself or worsens during a period of federal employment raises no inference of causal relationship between the two.<sup>5</sup> Causal relationship is a medical issue,<sup>6</sup> and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on whether there is a causal relationship between the claimant’s diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>7</sup> must be one of reasonable medical certainty,<sup>8</sup> and must be

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>5</sup> *Steven R. Piper*, 39 ECAB 312 (1987).

<sup>6</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>7</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>8</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>9</sup>

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.<sup>10</sup>

Medical conclusions unsupported by rationale are of little probative value.<sup>11</sup> Medical conclusions based on inaccurate or incomplete histories are also of little probative value.<sup>12</sup>

### **ANALYSIS**

There remains a substantial question how the incident occurred on May 15, 2009. Appellant did not tell the emergency medical service providers that he injured his low back after picking up a stack of tubs and bending over to set them down. If he did, it is not reflected in their records. Appellant told them only that he came into work that morning with low back pain, which progressively worsened until he could barely walk. The evidence contemporaneous to the claim does not implicate any particular incident at work.

This is consistent with the account given on appellant's claim form. Though he explained that a supervisor filled out the form for him, it is reasonable to expect that, if appellant had informed his supervisor that he hurt his low back moving a stack of divesture tubs, if he had told his supervisor that he felt a "popping" in his back when he tried to set the tubs down, such a description of injury would have made its way into the supervisor's report.

Appellant did tell his emergency medical service providers that the problem with his back "began last Thursday," which was May 7, 2009, a nonworkday. A May 8, 2009 treatment note shows that appellant cleaned the windows of his car on May 7, 2009, "causing him to contort in different ways." He started to have pain about 5 p.m. and did not sleep much that night. Appellant sought medical attention the next day, reported pain radiating into both knees and was diagnosed with acute lumbar strain.

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<sup>9</sup> See *William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>10</sup> *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984). See also *George W. Glavis*, 5 ECAB 363 (1953).

<sup>11</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

<sup>12</sup> *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

The record also shows that appellant had a significant history of low back injury. In March 2004 he injured his back while getting up from a chair, which caused flare ups about once a year. In August 2006 appellant injured his back while pulling a pilot's bag out of the x-ray machine. Further, in early May 2009 he packed file cabinets and boxes of supplies, took down signs and moved furniture. Though appellant testified to these incidents, he did not address washing the windows of his car on his day off. He told the Office hearing officer that it was after his days off -- May 6 and 7 -- that his back started to bother him. Appellant testified that he did not know why it started hurting: "That's the way my back has always been, you know. Honestly, I don't know," but the May 8, 2009 treatment note implicated an off-duty injury.

The Board finds that there are such inconsistencies in the evidence as to cast serious doubt on the validity of appellant's claim. It was not until June 25, 2009, nearly a month and a half after the alleged injury, that the medical evidence first mentioned the tubs. Dr. Ceola stated that appellant bent over to put tubs in a pile, felt a popping sensation and had pain shortly after that. This history is not reflected in the record contemporaneous to the May 15, 2009 incident.

Moreover, appellant did not tell Dr. Ceola about his prior history of back problems. Without that history, Dr. Ceola related appellant's ruptured disc to what happened at work on May 15, 2009; he could see no other reason for it. From what appellant told him, that was "the first time he has sought treatment for it." Because appellant did not give Dr. Ceola a proper history, the Board finds that Dr. Ceola's opinion on causal relationship carries little if any probative value. It does not support appellant's claim for compensation.

Appellant has not met his burden of proof to establish fact of injury. The Board will therefore affirm the Office's December 29, 2009 decision affirming the denial of his traumatic injury claim.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that he sustained a low back injury in the performance of duty on May 15, 2009. There remains a substantial question what happened that day, and the medical opinion evidence is insufficient to establish the critical element of causal relationship.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 29, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 1, 2010  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board